

File: Terrorism (98W)

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7 MAR 1983

General Counsel
83-01928

Honorable Jeremiah A. Denton, Jr.
Chairman, Subcommittee on
Security and Terrorism
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Denton:

This responds to the recent request by your staff for supplemental responses to six questions which were raised during my testimony on September 23, 1982 before your Subcommittee on S. 2255.

Attached hereto are our responses. In a few cases, we have not been able to obtain very much more information than was provided to your Subcommittee during my testimony. I hope this information will be of assistance to your Subcommittee.

Sincerely,

SIGNED

MARK H. RICHARD
Deputy Assistant Attorney General
Criminal Division

Attachment

cc: Mr. Sporkin ✓

1. Specific Examples of Abuses Which Have Occurred Which Would Have Been Prosecutable if S. 2255 Had Been Enacted (pages 29-30) */

It is difficult to answer this request because it assumes that some country or group would have been named pursuant to requirements of S. 2255. However, in addition to those instances mentioned in my testimony and certain acts involved in such recent highly publicized cases against Edwin Wilson and Frank Terpil, this legislation may have been applicable to such contract killings as that of Orlando Letelier in 1976, to the Palestinians who are permanent United States residents who journeyed recently to Lebanon to fight for the Palestine Liberation Organization (PLO) and then returned to the United States, to efforts by some operatives of the PLO to purchase handguns or high explosives and detonators, and to the involvement of members of the Justice Commandos of the American Genocide in the acquisition, construction, and transportation of an explosive device. It should be noted that in some of these situations, there may be some other federal criminal laws (e.g., explosive or weapons statutes) which have been violated.

Armenian

2. How Widespread Is Mercenary Activity On the Part of Americans? (page 34)

We requested the assistance of the FBI and the CIA in regard to this question. Unfortunately, we cannot be too helpful on this point except to state that we believe that it goes on in almost all areas of the globe to some degree. The FBI's investigative authority is limited to violations of the Federal neutrality laws. Mercenary activity frequently includes recruitment and operations overseas involving revolutionary groups and countries with which the United States does not have friendly relations. If an American is recruited overseas to provide mercenary skills to foreign countries, factions, or terrorist groups, no Federal law is violated. If an American mercenary is recruited in the United States, then the neutrality laws would be violated.

*/ Page references are to pages in the initial draft of Mr. Richard's actual testimony.

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3. Specific Examples of Existing Loopholes in Current Laws (page 39)

There are some gaps in existing law which we believe could be closed to enhance our investigative and prosecutive control in these areas. S. 2255 is one example of ways in which existing law could be tightened. The Administration is preparing a comprehensive package to deal with international terrorism which will be submitted to the Congress in the near future. Hence, this is not the proper time to discuss these issues. We have attached, however, a copy of the Report to the Congress submitted by the President pursuant to Section 719 of the International Security and Development Cooperation Act of 1981 which may be of assistance to the Subcommittee on this point. } ?

4. Constitutionality of the Standard Given to the President Under S. 2255 in Proposed 18 U.S.C. § 971(c)(1) (pages 42-43)

Section 3 of S. 2255 would amend title 18 by adding a new § 971. This proposed § 971 would, in general, prohibit United States citizens, companies and lawful resident aliens from rendering certain kinds of military and intelligence assistance to certain foreign governments and terrorist groups. The President would, whenever he found it necessary because of national security, foreign relations, or commerce interests, issue a proclamation naming the foreign governments, factions and terrorist groups subject to the ban. A question has been raised as to this provision's constitutionality.

We believe the provision is constitutional. It is similar to provisions found in other statutes, where, as here, Congress has found it advisable to place fairly broad discretion in the President's hands. See, e.g., 50 U.S.C. § 205 (suspension of commercial intercourse with States in insurrection); 22 U.S.C. § 2370(a) (embargo on trade with Cuba); 22 U.S.C. §§ 441-457 (neutrality laws). 1/ These statutes, like § 971,

1/ A fairly old example of this kind of law, passed in 1887, can be found at 46 U.S.C. § 143. The President was authorized to deny entry to the United States to ships or goods coming from any British dominions of North America that discriminated against American fishermen. Entry of ships or goods in violation of the proclamation was a criminal offense and subjected the ships and goods to forfeiture.

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provide the President with standards to guide his actions. Thus, the discretion of the President is not unguided, and it is possible to ascertain from the standards whether the will of Congress is being obeyed. Yakus v. United States, 321 U.S. 414 (1944). There is no reason to doubt either that Congress has the power to delegate this decisionmaking authority to the President or that § 971 provides adequate standards to guide his discretion.

5. Principles of International Law Giving Congress the Power to Regulate and Punish Conduct of United States Citizens and Others Owing Permanent Allegiance Wherever They May Be (page 44)

Section 971(g) states:

Except as provided in subsection (a)(2), there is extraterritorial jurisdiction over any violation of this section which is committed wholly or partially outside of the United States, its territories, or possessions.

Section 971 governs the conduct of American citizens and companies and lawfully admitted resident aliens. Extraterritorial jurisdiction over the first two is governed by the basic principle of international law that, "A state has jurisdiction to prescribe a rule of law attaching legal consequences to conduct of a national of the state wherever the conduct occurs." Restatement (Second) of Foreign Relations Law in the United States (Restatement) § 30(1)(a). This jurisdiction based on nationality is one of the most well recognized bases for a state's assertion of jurisdiction. See 1 Oppenheim's International Law (Lauterpacht 8th ed.) § 293; S. Rep. No. 605, Pt. 1, 95th Congress, 1st Sess. 37-38 (1977 (report on the Criminal Code Reform Act of 1977)).

The more difficult question is whether there is jurisdiction over the extraterritorial actions of aliens--citizens of another state--who are permanent resident aliens of the United States. 8 U.S.C. § 1101(a)(20). We are reluctant to state that jurisdiction can always be asserted over the extraterritorial actions of a permanent resident alien.

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Oppenheim, supra, § 317. 2/ We can assume, however, given the standards enunciated under § 971(c)(1), that the President will only name foreign nations or groups when their activities threaten the safety or functioning of the United States. Jurisdiction over such crimes can be based on the "protective" principle of international law. Restatement, supra, § 33. This principle states that a country has jurisdiction to prescribe a rule of law attaching legal consequences to conduct outside its territory that threatens its security as a state or the operation of its governmental functions. 3/ Therefore, we believe there would be a sufficient basis for asserting jurisdiction over the extraterritorial actions of permanent resident aliens under § 971(g).

6. Changes to the Forfeiture Laws (pages 44-45)

The specific language and the reasons for the proposed changes to the forfeiture provision in S. 2255 are set out on pages 3 and 4 of the appendix to Mr. Richard's prepared statement. In essence, the proposed revision of this provision is designed to simplify the description of the property that would be subject to an order of criminal forfeiture and to cure, through incorporation by reference of the established procedures of the criminal forfeiture provision of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. 1963), the bill's failure to address the variety of procedural issues that arise in criminal forfeitures.

2/ It is true that legal resident aliens, who may serve in the Armed Forces, see 10 U.S.C. §§ 3253, 8253, are subject to the Uniform Code of Military Justice wherever they serve, including overseas. The theory for this assertion of jurisdiction is based on their continued personal relation to the United States. The limitations of this authority, however, are not altogether clear.

3/ Moreover, Congress has the constitutional power to define offenses against the law of nations. U.S. Const., art. I, § 8, cl. 10. Terrorism, like piracy, is rapidly becoming the subject of international agreements. See R. Lillich, Transnational Terrorism: Conventions and Commentary (1982). Crimes that have been universally condemned may be prosecuted by any nation that apprehends the criminal. Restatement, supra, § 34.

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In the material with our statement, we noted that the Congress was considering much needed legislation to improve the RICO forfeiture provisions, and that by using a cross-reference to these provisions any such improvements would automatically become applicable to the forfeitures provided for in S.2255. The Congress did not, however, pass such RICO amendments, although legislation incorporating a number of improvements in criminal forfeitures in the drug trafficking context was passed by both the House and the Senate as one of the sections of H.R. 3963 which was vetoed by the President on January 14, 1983. Therefore, our suggested revision of S.2255's forfeiture provision, inasmuch as it incorporates by reference certain of the forfeiture provisions of RICO, would not address the limitations of current criminal forfeiture procedures that we sought to address in legislation such as S. 2320. The Judiciary Committee's Report on S.2320 (S. Rep. No. 97-250, 97th Cong., 2d Sess. 1982) discussed in detail these limitations of the current RICO statute and the need for corrective legislation. S. 2320 was passed by the Senate, with some modifications, as one of the titles of the Violent Crime and Drug Enforcement Improvements Act of 1982, S. 2572, and as H.R. 7140 (the Senate language was substituted for the House language, but was not subsequently approved by the House). It may also be noted that certain legislation (H.R. 3963) affecting forfeitures in the context of drug trafficking which Congress passed also failed to enact the desired improvements contained in the Senate's RICO bill, S.2320.



DEPARTMENT OF STATE

Washington, D.C. 20520

Dear Mr. Speaker:

On behalf of the President, I am forwarding the enclosed report required by Section 719 of the International Security and Development Cooperation Act of 1981.

Sincerely,

Powell A. Moore
Assistant Secretary
for Congressional Relations

Enclosure:

As stated

The Honorable
Thomas P. O'Neill, Jr.,
Speaker,
House of Representatives.

INTRODUCTION

Section 719 of the International Security and Development Cooperation Act of 1981 requires the President to submit a report including:

"(1) a description of all legislation, currently in force, and of all administrative remedies, presently available, which can be employed to prevent the involvement, service, or participation by U.S. citizens in activities in support of international terrorism or terrorist leaders;

(2) an assessment of the adequacy of such legislation and remedies, and of the enforcement resources available to carry out such measures, to prevent the involvement, service, or participation by U.S. citizens in activities in support of international terrorism or terrorist leaders; and

(3) a description of available legislative and administrative alternatives, together with an assessment of their potential impact and effectiveness, which could be enacted or employed to put an end to the participation by U.S. citizens in activities in support of international terrorism or terrorist leaders."

This report is a response to that requirement.

I. GENERAL U.S. LAW

At the beginning of this assessment, it is necessary to set the scope of what conduct is meant by "involvement, service, or participation of U.S. citizens in support of international terrorism or terrorist leaders."

The Congress has defined "international terrorism" (for purposes of foreign intelligence), as follows:

"(c) 'International terrorism' means activities that ---

(1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended ---

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum." (50 U.S.C. 1801(c)).

For purposes of this report, we will use the definition of international terrorism set out above. We will consider the following as "involvement, service, or participation in activities in support of international terrorism":

- (1) Involvement in actual terrorist attacks;
- (2) Involvement in a conspiracy to commit such attacks;
- (3) Providing weapons, training, or other technical assistance with the likelihood that such assistance will be used in a terrorist attack.

A. Direct involvement in terrorist activities.

The criminal law of the United States (mainly Title 18, United States Code) and the laws of the 50 states outlaw many forms of criminal conduct directly utilized by terrorists as tactics in their efforts to coerce a civilian population or to influence governmental policy or action. Although the political motivation of these criminal acts sets them apart from more common crime, by definition a terrorist act is always an act or threat of criminal violence. Examples include murder, kidnapping, hostage-holding, arson, bombing, and hijacking. Such conduct or direct involvement in such a crime or in conspiracy, solicitation, or attempt to commit such a crime, is prohibited and punishable by the criminal law so long as the crime is either committed in the U.S. or impinges on our country so as to provide us with a sufficient jurisdictional nexus.

In certain cases, pursuant to international obligations, the United States has extended its criminal jurisdiction to cover crimes committed in foreign countries when the alleged offender is found in the United States. This legislation applies not only to U.S. citizens but to persons of all nationalities. Examples of such crimes are aircraft hijacking (pursuant to the Convention for the Suppression of Unlawful Seizure of Aircraft) and crimes against internationally protected persons (pursuant to the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents). The obligation to extend U.S. jurisdiction derives from these international agreements which are intended to further international cooperation in bringing those who commit

the specified crimes of justice, and is necessary to implement the principle of "prosecute or extradite" found in the conventions relating to terrorist crimes.

Under consideration within the U.S. government are other legislative initiatives which would implement other treaties relating to additional terrorist tactics. H.R. 4847, which would implement the provisions of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage), is currently pending in Congress. Legislation is also pending in Congress which is designed to implement the Convention on Physical Protection of Nuclear Material (H.R. 5228, awaiting floor action in the House and S. 1446, moving forward in the Senate Judiciary Committee). Furthermore, the Administration is now developing a legislative proposal which would implement the International Convention Against the Taking of Hostages, a similar treaty dealing with the crime of hostage-taking. The Administration supports these legislative proposals which will make a substantial contribution to the United States' ability to take action against terrorists.

Other factors affecting the United States' ability to bring the criminal law to bear on those who have committed terrorist crimes are the problem of attaining custody over a fugitive (a problem not limited to those who are involved in terrorism) and the problem of extradition, particularly the "political offense" exception to extradition which is contained in many extradition treaties of the United States.

B. Support Activities

There are also other forms of conduct which are less directly related to the actual commission of acts of terrorism but which are potentially included in Section 719's language of "activities in support of international terrorism." These "support" activities range from speechmaking and propaganda activities on behalf of those who commit acts of terrorism, which may be protected by the First Amendment, to the outer fringes of a conspiracy to commit a terrorist attack. Somewhere between these two extremes are a number of supportive activities which are affected by current U.S. general law, such as supply and training. The following is a summary of existing U.S. law which could be used to regulate such activities.

1. The Arms Export Control Act (AECA)

With respect to the regulation of export of weapons from the U.S., Section 38 of the Arms Export Control Act (22 U.S.C. 2778) authorizes the President to control the import and export of defense articles and defense services and to provide foreign policy guidance to U.S. persons who are involved in such exports and imports. This provision also authorizes the President to designate those articles and services which shall be considered

to be defense articles and services and to promulgate the necessary regulations to control exports and imports. Comparable authority had previously been granted to the President under the Mutual Security Act of 1974 (Section 414).

Pursuant to these authorities, the Department of State promulgated the International Traffic in Arms Regulations (22 Code of Federal Regulations, ~~Sub~~Chapter M) (the ITAR). These regulations contain the U.S. Munitions List (Part 121 of the ITAR), which specifies the articles and technical data subject to control under the ITAR.

Under the current ITAR, individuals who intend to export defense articles or related technical data must, as a general rule, obtain an export license or other approval from the Department of State. (Exemptions exist for certain exports.) Individuals who intend to perform certain services related to defense articles must also obtain licenses under the ITAR. The reason is that under the current regulatory scheme, exports of information that . . . can be used, or be adopted for use, in the design, overhaul, processing, engineering, development, operation, maintenance, or reconstruction of defense articles require an export license. (For purposes of the ITAR, an export consists of taking or sending technical data or defense articles out of the U.S. and certain disclosures of data to foreign persons within the U.S. See e.g., 22 C.F.R. 121.19 and 125.03). As a result, the performance of maintenance overseas on defense articles by U.S. corporations frequently requires an export license. Instruction on the use of defense articles can also frequently require a license. However, these provisions of the ITAR have not in practice been interpreted to encompass "mercenary" type activities and several other acts not directly related to the rather technical aspects of weapons.

In 1979, the Department of State decided to revise the ITAR. A proposed revision of the ITAR was published in the Federal Register on December 19, 1980, and numerous public comments were received. A revised ITAR is to be published in 1982.

One of the revisions proposed was the inclusion of a specific definition of "defense service." The Department of State is now considering whether the definition should be broadened to encompass the training of foreign military forces and the participation of U.S. nationals in foreign military activities generally. The statutory authority conferred on the President by Section 38 of the ACEA is clearly a broad one -- it specifically refers to the regulation of exports of defense services -- and it appears that regulating certain military activities would be consistent with the purposes underlying the ACEA. The Department of State is in the process of formulating appropriate provisions for coordination within the Executive Branch and for public comment.

If such provisions were to be enacted, the participation of U.S. nationals in certain military activities on behalf of foreign persons or entities would require prior U.S. Government consent.

It should be noted that under the ITAR, export licenses may be denied if the Department determines that a proposed export would be contrary to U.S. foreign policy, the interests of world peace, or the security of the U.S. (22 C.F.R 123.05). The ITAR also provides that all Munitions List exports are prohibited to certain countries because the Department of State has determined that all exports to these countries are contrary to U.S. policy (22 C.F.R. 126.01). For example, all exports of Munitions List articles and services are prohibited under this provision with respect to most Communist countries. If it is ultimately decided to promulgate regulatory provisions on the participation by U.S. nationals in certain foreign military or paramilitary activities, permission to participate in such activities in the enumerated countries would automatically be denied.

2. Economic Regulation

a. International Emergency Economic Powers Act (IEEPA).

The International Emergency Economic Powers Act gives the President broad powers to regulate U.S. nationals' financial dealings with foreign nationals or governments during times of declared national emergency. This statute was the authority for the blocking of Iranian assets by the Treasury Department during the hostage crisis. The President's emergency powers under IEEPA are available only when the President declares a national emergency with respect to an event or situation which the President finds constitutes an unusual and extraordinary threat to the national security, foreign policy or economy of the United States. The statutory language and its legislative history make clear that IEEPA is to be utilized only in response to particular events of great magnitude.

In exceptional circumstances, such as the seizure of the American Embassy in Tehran, the President could declare a national emergency and use the resulting emergency powers under IEEPA to regulate U.S. citizens' financial transactions with foreign governments or persons engaged in acts of international terrorism. However, because IEEPA properly can be used only in extraordinary emergency situations, it does not provide a reliable means to regulate such activities by U.S. citizens under most circumstances.

b. Export Administration Act (EAA).

Section 6 of the Export Administration Act of 1979 authorizes controls on U.S. exports where necessary to significantly further U.S. foreign policy. Controls may be placed not only on exports from the United States but also on exports "by any person subject to the jurisdiction of the United States" of "goods, technology, or other information."

Section 6(i) of the EAA requires Congressional notification at least 30 days before an export license is approved for the export of goods and technology valued at over \$7 million which would make a significant contribution to the military potential of a country which has been designated by the Secretary of State as a repeated supporter of acts of international terrorism. Currently in force are controls on Libya, Syria, the People's Democratic Republic of Yemen, and Cuba on dual-use security items valued at more than \$7 million to military end-users. Other foreign policy controls apply to virtually all exports to Libya and Cuba.

The EAA also provides potential authority for controls against U.S. persons rendering services in controlled foreign destinations, on the theory that such transactions involve a transfer of "technology or other information" which constitutes an "export." However, such controls have never been imposed and the EAA authority for them is untested.

3. The "Neutrality Laws"

There are a number of sections of U.S. Code, the so-called "neutrality laws," which relate to the problem of armed attacks against other countries launched from the United States. These statutes, which are contained in 18 U.S.C. 951-970, have been used to prosecute persons who have undertaken armed invasions from United States soil. The statutes are cast in terms which indicate that the primary intention was to make illegal certain activities from the U.S. in support of foreign belligerents when the United States is not involved in the conflict. For example, Section 956 prohibits conspiring within the U.S. to injure in a foreign country the property of a foreign government with which the United States is at peace. Section 958 prohibits U.S. citizens from accepting and exercising a commission to serve a foreign power against another foreign power with which the United States is at peace. Section 959 prohibits enlistment or recruitment within the U.S. for the military services of a foreign state. Section 960, most frequently used, prohibits the launching of a military expedition from the United States against any country with which the United States is at peace.

As noted above, these statutes are intended to prohibit the launching of private invasions or armed attacks from the United States and are not primarily directed against terrorism. However, like other federal criminal statutes, they could be used when their provisions are violated by the terrorist's acts.

A separate question which is being addressed within the Department of Defense and the intelligence community is the recruitment of current or former U.S. personnel to participate in such activities. The Department of Defense has established policy to preclude unauthorized recruitment of U.S. military personnel.

The statutes and accompanying regulations described above are generally workable to permit the United States to take steps in most cases to deter and to bring to justice those who are directly involved in support for international violence. However, there are several areas where additional legislation may be needed. An example of the workability of the statutes is the fact that in the most celebrated case, that of Edwin Wilson and Frank Terpil, federal indictments alleging numerous offenses have been brought. In that case, the adequacy of U.S. law to bring charges is not in doubt; the problem is attaining custody of fugitives, which, as noted above, is a problem not limited to the area of support for terrorism and which is not susceptible to remedy by U.S. legislation.

In the Senate floor debate surrounding the Amendment which required this report, Senator Glenn noted an article which indicated that U.S. citizens had allegedly accepted employment performing services for the Libyan Air Force. Without more direct involvement in violent acts or the the direction of such acts, such services cannot be construed to be involvement in international terrorism. While governments frequently conduct policies inimical to U.S. interests through their military forces, the fact that such activities are reprehensible does not make them "terrorism." Whether such activities should be prohibited is an issue distinct from what might be done in terms of legislation to prevent U.S. citizen involvement in international terrorism.

Since the passage of the International Security and Development Cooperation Act (DCA) of 1981, the United States has expanded greatly its export controls on Libya. We are confident that the revision of the export controls which went into effect on March 16, to include a wider selection of commodities and technical data which could be of military significance to Libya has contributed to our ability to monitor and control U.S.-origin activities in support of Libyan adventurism.

The question of resources to deal with international terrorism has been addressed and found to be generally adequate. For example, the FBI has dedicated increased manpower and other resources to the investigation of international terrorism. Specific needs in this area have been enumerated in the FY-1983 and FY-1984 budget submissions.

Alternatives

The Department of Justice believes that while existing laws are workable, there are some gaps which should be closed in order to facilitate a better federal investigative and prosecutive response to the problems caused by international terrorism.

where additional legislation is needed to allow the United States to deter or successfully prosecute those who are directly involved in the support of international terrorism. Present law, 18 U.S.C. 1116 and 18 U.S.C. 371, prohibits a conspiracy in the United States to murder high level foreign officials if they are to be killed outside of their own country. See also 18 U.S.C. 112, 878, and 1201(a) (4). Further, 18 U.S.C. 956 prohibits a conspiracy in the United States to commit certain acts of sabotage or property destruction in foreign countries with which the United States is at peace. However, there is no statute proscribing a conspiracy within the United States to kill, assault, threaten or kidnap a foreign official within his own country, although these acts can have a great impact on our foreign relations.

In addition, legislation closely regulating the involvement of United States citizens and permanent resident aliens in the providing of training and support services for foreign military and intelligence agencies would be helpful. The Arms Export Control Act, as discussed in the draft report, is generally limited to regulating the export of defense -- as opposed to intelligence -- articles and services. It should be noted that the Department of Justice has under consideration two similar bills, S. 2255 and H.R. 5211, that have been introduced in Congress which appear to provide a starting point for legislation in this area. An Administration position on this legislation is now being formulated.

Legislation may also be necessary to respond to a situation where a person falsely represents that he is acting on behalf of a United States intelligence agency or that some operation he is conducting has been endorsed or is supported by a United States intelligence agency when such is not the case. Furthermore, there may be a need to limit contact by former employees of United States intelligence agencies with their former agencies and the use of former employees by an intelligence agency unless such contact or use is approved by appropriate officials in the agency. It is not clear at this time, however, whether legislation is necessary to accomplish these last two goals or whether establishment of appropriate internal procedures by the intelligence agencies would be sufficient.

The United States Secret Service, which has protective security responsibility for providing protective security to many persons who might be the target of terrorist attacks, is seeking, along with the Treasury Department, additional legislation which will make it a crime to threaten to kill, harm, or kidnap any statutory protectee of the Secret Service who is not already provided for by other statutes. In addition, Treasury and the Secret Service are seeking legislation which would clarify the Service's inherent authority to establish "zones of protection" around its protectees which it is a criminal offense to penetrate. Only the President is presently expressly covered by such authority. These badly needed measures are now pending in Congress.

Finally, also under consideration is a legislative proposal which would authorize payment of monetary rewards for information leading to the arrest and conviction of individuals and groups who commit acts of terrorism or conspire to commit such acts. The deterrent effect of such a program would also help in preventing U.S. citizen support for international terrorism. These and other needed legislative reforms in this area are under consideration by the Administration in anticipation of submission to the next Congress.

As noted above, consideration is now being given within the executive branch to changes in the ITAR which would bring the training of foreign military entities within the licensing requirements of the Arms Export Control Act. Although no final decision has been reached, such a change would contribute to remedying the situation noted in Senator Glenn's floor statement on this amendment.

The Administration will continue to review the need for legislation in this area and will make recommendations to Congress when appropriate.

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Room 273 1/2
Old Executive Office Building
Washington, D.C. 20500
Office: 456-7616

PUBLIC LAW 97-113—DEC. 29, 1981

95 STAT. 1519

Public Law 97-113
97th Congress

An Act

To authorize appropriations for the fiscal years 1982 and 1983 for international security and development assistance and for the Peace Corps, to establish the Peace Corps as an autonomous agency, and for other purposes.

Dec. 29, 1981
[S.1196]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

International
Security and
Development
Cooperation Act
of 1981.
22 USC 2151
note.

SHORT TITLE

SECTION 1. This Act may be cited as the "International Security and Development Cooperation Act of 1981".

TITLE I—MILITARY SALES AND RELATED PROGRAMS

REPORTS TO THE CONGRESS

SEC. 101. (a)(1) Section 3(d)(1) of the Arms Export Control Act is amended— 22 USC 2753.

(A) in the text preceding subparagraph (A) by striking out "to a transfer of a defense article, or related training or other defense service, sold under this Act and may not give his consent to such a transfer under section 505(a)(1) or 505(a)(4) of the Foreign Assistance Act of 1961" and inserting in lieu thereof "or under section 505(a)(1) or 505(a)(4) of the Foreign Assistance Act of 1961, to a transfer of any major defense equipment valued (in terms of its original acquisition cost) at \$14,000,000 or more, or any defense article or related training or other defense service valued (in terms of its original acquisition cost) at \$50,000,000 or more,"; 22 USC 2314.

(B) by amending subparagraph (B) to read as follows:

"(B) a description of the article or service proposed to be transferred, including its acquisition cost,";

(C) in subparagraph (C) by striking out "defense article or related training or other defense service" and inserting in lieu thereof "article or service"; and

(D) in the last sentence by striking out "defense articles, or related training or other defense services," and inserting in lieu thereof "articles or services".

(2) Section 3(d)(3) of such Act is amended by striking out all that follows "The President may not give his consent" through "section 38 of this Act," and inserting in lieu thereof "to the transfer of any major defense equipment valued (in terms of its original acquisition cost) at \$14,000,000 or more, or of any defense article or defense service valued (in terms of its original acquisition cost) at \$50,000,000 or more, the export of which has been licensed or approved under section 38 of this Act,". 22 USC 2778.

(3) Section 3(d)(4) of such Act is amended—

(A) by inserting "or" at the end of subparagraph (B);

(B) by striking out "or" at the end of subparagraph (C) and inserting in lieu thereof a period; and

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by the Government of the Union of Soviet Socialist Republics of all its outstanding financial obligations to the United Nations, including its assessments with respect to the peacekeeping operations of the United Nations.

CONDEMNATION OF LIBYA FOR ITS SUPPORT OF INTERNATIONAL TERRORIST MOVEMENTS

SEC. 718. (a) The Congress condemns the Libyan Government for its support of international terrorist movements, its efforts to obstruct positive movement toward the peaceful resolution of problems in the Middle East region, and its actions to destabilize and control governments of neighboring states in Africa.

(b) The Congress believes that the President should conduct an immediate review of concrete steps the United States could take, individually and in concert with its allies, to bring economic and political pressure on Libya to cease such activities, and should submit a report on that review to the Congress within one hundred and eighty days after the date of enactment of this Act. Such a review should include the possibility of tariffs on or prohibitions against the import of crude oil from Libya.

Report to Congress.

UNITED STATES CITIZENS ACTING IN THE SERVICE OF INTERNATIONAL TERRORISM

SEC. 719. (a) It is the sense of the Congress that the spread of international terrorism poses a grave and growing danger for world peace and for the national security of the United States. As a part of its vigorous opposition to the activities of international terrorist leaders and the increase of international terrorism, the United States should take all steps necessary to ensure that no United States citizen is acting in the service of terrorism or of the proponents of terrorism.

(b) Not later than six months after the enactment of this Act, the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report which includes—

(1) a description of all legislation, currently in force, and of all administrative remedies, presently available, which can be employed to prevent the involvement, service, or participation by United States citizens in activities in support of international terrorism or terrorist leaders;

(2) an assessment of the adequacy of such legislation and remedies, and of the enforcement resources available to carry out such measures, to prevent the involvement, service, or participation by United States citizens in activities in support of international terrorism or terrorist leaders; and

(3) a description of available legislative and administrative alternatives, together with an assessment of their potential impact and effectiveness, which could be enacted or employed to put an end to the participation by United States citizens in activities in support of international terrorism or terrorist leaders.

Report to Congress.

NONALIGNED COUNTRIES

SEC. 720. (a) In considering whether to provide assistance, make sales, extend credits, or guarantee loans under the provisions of the Foreign Assistance Act of 1961, as amended, or the Arms Export Control Act, to any country represented at the Meeting of the

22 USC 2151
note.
22 USC 2751
note.

PUB

Ministers of Foreign Aligned Countries to the President shall take itself from the (b) Within thirty the President shall Representatives and Senate on the count: nonaligned countries dissociation.

PROMOTING THE PROVIDING

SEC. 721. (a)(1) It is of the funds available part I of the Foreign for development assistance subsection (b) of this (2) To the maximum fiscal year 1982 under Act of 1961 should organizations.

(b) Funds available: part I or chapter 2 or Act of 1961 may be extended for the fiscal may be approved for that the Government c

(1) is cooperation emigration from F

(2) is not aiding emigration from H

(3) has provided implementing Un

(4) is not engaged internationally rec

(c) Six months after t

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paragraphs (1), (2), (3)

(d) Notwithstanding

Assistance Act of 1961,

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Haiti to the United Stat

COMPREHENSIVE

SEC. 722. (a) It is the restraints and restraints, it is also logical commitments, the major programs should process, the President is to the Congress on his



WASHINGTON, D.C. 20503

February 7, 1983

83-01129

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer-

Department of Justice
National Security Council
Department of the Treasury
Department of Transportation
Department of Defense
✓ Central Intelligence Agency

SUBJECT: State draft proposal, the "Rewards for Information concerning International Terrorism Act."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than FRIDAY, MARCH 4, 1983.

Questions should be referred to Tracey Lawler (395-4710), the legislative analyst in this office,

Ronald K. Peterson
RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosures
cc: Jim Barie
Frank Seidl



United States Department of State

Washington, D.C. 20520

Dear Mr. Speaker:

Enclosed for consideration by the Congress is a draft bill to amend Title 50 of the United States Code to authorize the Secretary of State to pay rewards for information leading to the arrest or conviction of individuals who commit or attempt to commit acts of international terrorism against United States persons or property and for information leading to the prevention or successful resolution of such acts of international terrorism.

This proposed "Rewards for Information Concerning International Terrorism Act" has been developed by the Department of State, in coordination with the Departments of Justice, Treasury and Defense. The draft bill has been examined and approved by the Interdepartmental Group on Terrorism.

In the past, it has been the experience of the Department of State that it would often be useful for the United States to be able to offer rewards for information concerning international terrorism. Such offers would draw the attention of persons who might have information concerning an incident, but who would not otherwise come forward. These would include persons involved in a terrorist incident, as well as uninformed persons who happen to have relevant information. A reward would be offered not as a means to pay ransom, but rather to prevent or successfully resolve an incident.

The proposed legislation deals only with rewards for information concerning acts of international terrorism. The Department of Justice currently has authorization to pay rewards for acts of terrorism which violate United States law. (18 U.S.C. 3059). The proposed legislation would provide for the Secretary of State to advise and consult with the Attorney General to ensure that the rewards policy which the Department of State would follow would not adversely affect the Department of Justice's rewards policy.

The Honorable
Thomas P. O'Neill, Jr.,
Speaker,
House of Representatives.

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Rewards of not more than \$500,000 each would be authorized by this legislation. The Secretary of State would make the determination whether a person should be granted a reward and its amount, after consulting with the Attorney General as described above. In the case of rewards of more than \$100,000, the President's approval would be needed. Such funds as would be necessary to make the rewards would be authorized to be appropriated. In appropriate cases, the name of the informant would be kept confidential and, if the Attorney General agrees, he and his immediate family would be eligible to participate in the Department of Justice's Witness Protection Program.

The Rewards for Information Concerning International Terrorism Act would be a significant addition to the United States' arsenal in the fight against terrorism. In addition to its practical effect, its passage would signal our continued commitment to combat terrorism and our willingness to take active measures. For these reasons, we would appreciate early consideration of this bill by the Congress. A similar letter is being sent to the President of the Senate.

We have been advised by the Office of Management and Budget that there is no objection from the standpoint of the President's program to the enactment of the enclosed draft bill.

With cordial regards,

Sincerely,

Powell A. Moore
Assistant Secretary for
Congressional Relations

Enclosures:

1. Draft Bill
2. Section-by-Section Analysis

A BILL

TO AMEND TITLE 50 OF THE UNITED STATES CODE TO AUTHORIZE THE UNITED STATES SECRETARY OF STATE TO PAY REWARDS FOR INFORMATION LEADING TO THE ARREST OR CONVICTION OF INDIVIDUALS WHO COMMIT OR ATTEMPT TO COMMIT OR CONSPIRE TO COMMIT ACTS OF INTERNATIONAL TERRORISM AGAINST UNITED STATES PERSONS OR PROPERTY AND FOR INFORMATION LEADING TO THE PREVENTION OR SUCCESSFUL RESOLUTION OF SUCH ACTS OF INTERNATIONAL TERRORISM.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Section 1. Short Title

This Act may be cited as the "Rewards for Information Concerning International Terrorism Act".

Section 2. Information Concerning International Terrorism; Maximum Amount of Reward

Any person who furnishes original information to the United States --

(a) leading to the arrest or conviction, in any country, of a person for the commission or attempted commission of an act of international terrorism against a United States person or property, or

(b) leading to the arrest or conviction, in any country, of a person for conspiring to commit an act of international terrorism against a United States person or property, or

(c) leading to the prevention or successful resolution of an act of international terrorism against a United States person or property

-- may be rewarded by the payment of not more than \$500,000.

Section 3. Determination by Secretary of State to Grant Reward; Amount of Reward; Consultation; Presidential Approval

(a) The Secretary of State shall determine whether a person furnishing information as described in Section 2 of this Act should be granted a reward and the amount of the reward to be paid pursuant to the procedures described in this Act. Before granting a reward under this Section, the Secretary of State shall advise and consult with the Attorney General.

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(b) A reward of more than \$100,000 may not be made without the approval of the President or his designate.^{ee}

Section 4. Rules and Regulations; Conclusiveness of Determinations

(a) The Secretary of State is authorized to make such rules and regulations as may be necessary to carry out the purposes of this Act.

(b) A determination made by the Secretary of State under this Act shall be final and conclusive and no court shall have power or jurisdiction to review it.

Section 5. Payment of Rewards

(a) Subject to the provisions of this Act, The Secretary of State is authorized to pay any person rewards authorized under Section 3 of this Act.

(b) If the Secretary of State determines that the identity of the recipient or the members of his immediate family must be protected, then the payment authorized under subsection (a) shall be treated as a payment of a confidential nature under the direction of the Secretary of State and accounted for solely on his certificate.

Section 6. Authorization for Appropriation

Such sums as may be necessary are authorized to be appropriated for the payments authorized under Section 3 of this Act.

Section 7. Eligibility for Witness Protection Program

Any person whom the Secretary of State has determined should be granted a reward pursuant to Section 3 of this Act and the members of his immediate family may, in the discretion of the Attorney General, participate in the witness protection program authorized under Title V of the Organized Crime Control Act of 1970.

Section 8. Exception for Officials of Any Governmental Entity

No officer or employee of any governmental entity who, while in the performance of official duties, furnishes the information described in Section 2 of this Act may be granted any reward under this Act.

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Section 9. Definitions

As used in this Act:

(a) "Act of international terrorism" means activity that --

(1) involves a violent act or an act dangerous to human life that is not a violation of the criminal laws of the United States but that would be a criminal violation if committed within the jurisdiction of the United States and/or that is a violation of the criminal laws of any country other than the United States; and

(2) appears to be intended --

(A) to intimidate or coerce a civilian population;

or

(B) to influence or affect the policy or conduct of a government by intimidation or coercion; and

(3) occurs totally outside the United States, or transcends national boundaries in terms of the means by which it is accomplished, the person or persons it appears intended to intimidate or coerce, or the locale in which its perpetrator or perpetrators operate or seek asylum.

(b) "United States person" means --

(1) any national of the United States as defined in Section 101(a)(22) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(22)];

(2) any alien lawfully admitted for permanent residence as defined in Section 101(a)(20) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(20)];

(3) any person actually within the United States;

(4) any employee or contractor of the United States, regardless of nationality;

(5) any partnership, association, corporation, or other organization that is organized under the laws of or is doing business in the United States; and

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(6) any partnership, association, corporation, or other organization, wherever organized or doing business, that is substantially owned or controlled by or which is substantially composed of persons specified in paragraphs (1), (2), (3), or (5) of this subsection.

(c) "United States property" means any real or personal property which is within the United States or the actual or beneficial ownership of which rests in a United States person, as defined in subsection (b) of this Section, or in the United States or any subdivision thereof.

(d) "Governmental entity" includes the Government of the United States, any political subdivision thereof, any foreign country, and any state, province, municipal or other political subdivision of a foreign country.

(e) "Secretary of State" means the Secretary of State of the United States or that official designated by the Secretary of State to perform his responsibilities under this Act.

(f) "Attorney General" means the Attorney General of the United States or that official designated by the Attorney General to perform his responsibilities under this Act.

(g) "United States" includes any state, district, commonwealth, territory, or possession of the United States.

SECTION-BY-SECTION ANALYSIS OF THE PROPOSED ACT TO AMEND TITLE 50 OF THE UNITED STATES CODE TO AUTHORIZE THE UNITED STATES SECRETARY OF STATE TO PAY REWARDS FOR INFORMATION LEADING TO THE ARREST OR CONVICTION OF INDIVIDUALS WHO COMMIT OR ATTEMPT TO COMMIT OR CONSPIRE TO COMMIT ACTS OF INTERNATIONAL TERRORISM AGAINST UNITED STATES PERSONS OR PROPERTY AND FOR INFORMATION LEADING TO THE PREVENTION OR SUCCESSFUL RESOLUTION OF SUCH ACTS OF INTERNATIONAL TERRORISM

I. INTRODUCTION

This legislation is being proposed to authorize the Secretary of State to pay rewards for information concerning international terrorism. Its purpose is to facilitate the prevention or successful resolution of an act of international terrorism by allowing the offer of a reward for information concerning acts of international terrorism. Such a reward would induce persons with relevant information who might otherwise not come forward to provide that information to the United States.

The bill is limited to information concerning an "act of international terrorism" in order to prevent a situation in which both the Secretary of State and the Attorney General, who already has authority in the instances of violations of domestic law, would pay a reward.

II. PROVISIONS OF THE BILL

Section 1

This section provides that the bill may be referred to as the "Rewards for Information Concerning International Terrorism Act".

Section 2

This section provides that a reward of not more than \$500,000 may be paid to a person who furnishes original information to the United States leading to the arrest or conviction in any country of a person for the commission or attempted commission or conspiracy to commit an act of international terrorism against a United States person or property or leading to the prevention or successful resolution of an act of international terrorism against a United States person or property. These rewards would not be used to pay ransom.

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Section 3

This section provides that the Secretary of State shall determine whether a person who furnishes information as described in Section 2 should be granted a reward and the amount of that reward. The Secretary of State shall advise and consult with the Attorney General before he grants such a reward. This consultation would ensure that the Secretary of State's rewards policy would not conflict with the Attorney General's rewards policy.

This section also provides that a reward of more than \$100,000 may not be made without the approval of the President or his designate. This would ensure the concurrence of the President on major rewards.

Section 4

This section provides that the Secretary of State may make such rules and regulations as may be necessary to carry out the purposes of the Act. The Secretary's determination as to who should receive a reward and its amount would be final and not subject to judicial review.

Section 5

This section provides that the Secretary of State is authorized to pay rewards authorized under Section 3 of the Act, subject to the provisions of the Act. When the Secretary determines that the identity of the recipient of a reward or the members of his immediate family must be protected, then this section provides that such payments would be treated as payments of a confidential nature under the direction of the Secretary of State and accounted for solely on his certificate.

Section 6

This section provides that such sums as may be necessary are authorized to be appropriated to pay any rewards properly authorized under Section 3 of the Act. This allows the Secretary of State to pay rewards without being required to get prior appropriations for each reward.

Section 7

This section provides that any person whom the Secretary of State has determined should be granted a reward pursuant to

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a.
Section 3 of the Act and the members of his immediate family may, in the discretion of the Attorney General, participate in the Witness Protection Program administered by the Department of Justice and authorized by the Organized Crime Control Act of 1970. This would allow persons who have furnished information concerning acts of international terrorism which the Secretary has determined to reward, either before or after they had actually received a reward, to be protected in the federal witness protection program, if the Attorney General approves.

Section 8

This section provides that no officer or employee of any government entity who furnishes information described in Section 2 of the Act while in performance of his official duties may be granted a reward. This section prevents any reward to government officials or employees, such as police or other law enforcement officials, who provide the relevant information as part of their job-related duties.

Section 9

This section provides that, as used in the Act, "act of international terrorism" means an activity which (1) involves a violent act or an act dangerous to human life that is not a violation of U.S. criminal law, but that would be if committed within the jurisdiction of the United States and/or that is a violation of the criminal laws of any country other than the United States; and (2) appears intended to intimidate or coerce a civilian population or to influence or affect the policy or conduct of a government by intimidation or coercion; and (3) occurs totally outside the United States or transcends national boundaries in terms of the means by which it is accomplished, the person or persons it appears intended to intimidate or coerce, or the locale in which the perpetrator or perpetrators operate or seek asylum. This definition is meant to prevent an overlap of this rewards authority with the rewards authority of the Attorney General in cases of violations of U.S. domestic law.

This section defines a "United States person" to include any national of the United States, any lawful permanent resident alien, any person actually within the United States, any employee or contractor of the United States regardless of nationality, any U.S. business entity, or any business entity, wherever organized or doing business, which is substantially owned or controlled or is substantially

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composed of U.S. persons. This definition is meant to be as broad as possible and to include all natural or juridical persons with any reasonable connection to the United States.

This section defines "United States property" as any real or personal property wherever located the actual or beneficial ownership of which rests in a U.S. person, as previously defined, or in the United States or any subdivision thereof. This definition is meant to be as broad as possible and to include all property with any reasonable connection to a U.S. person or U.S. governmental body.

This section defines "governmental entity" as including the United States Government, any political subdivision thereof, any foreign country, and any political subdivision thereof. This definition is meant to define as broadly as possible the governmental entities whose officers or employees are not eligible for rewards for furnishing information concerning international terrorism while performing official duties.

This section defines "Secretary of State" to mean the U.S. Secretary of State or that official designated by the Secretary to perform the Secretary's responsibilities under the Act. This section allows the Secretary to delegate to another official his functions under the Act.

This section defines "Attorney General" to mean the U.S. Attorney General or that official designated by the Attorney General to perform the Attorney General's responsibilities under the Act. This section allows the Attorney General to delegate to another official his functions under the Act.

This section defines "United States" to include any state, district, commonwealth, territory or possession of the United States. This section indicates that in every instance in which the phrase "United States" is used in the Act, reference is implicitly made to the various constituent parts of the United States as well.